

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

REMARKS/ARGUMENTS

1. Remarks on the Amendments

The Specification has been amended to correct a typographical error, and provide proper incorporation by reference of the prior applications.

Claims 4-5, 12-13, 15 and 18 have been amended to correct typographic errors. Claims 1, 6, 8-10, 14 and 16-17 have been amended to more specifically define Applicants' claimed invention. Claims 2-3, 11 and 19-20 have been canceled, since they become redundant after the amendments of independent Claims 1, 6 and 14.

Antecedent basis of the amendments of Claims 1, 6 and 14 related to the hook segment structure can be found on page 8, fourth paragraph, canceled claim 11, and Figs. 1, 3 and 7. Antecedent basis of the amendments of Claims 1, 6 and 14 related to the function of the hook segment can be found on page 12, second paragraph of the Specification as filed.

Applicants respectfully submit that no new matter has been added by the amendments of the Specification and claims.

Total of 15 claims are pending.

2. Statement on the Priority Claims

Applicant appreciates the Examiner's reminder of the priority claim and submission of the priority documents.

As stated in the first paragraph of the instant application and the Declaration, Applicant claims priority of Swedish patent application No. 0202768-8 filed September 18, 2002, and has submitted the priority document at the time of filing.

Furthermore, Applicant also claims priority of U. S. design patent application No. 29/177,805 filed March 16, 2003 which claims the priority of Swedish design

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

application No. 02-1364 filed September 18, 2002. The priority document of the Swedish design application was submitted to the U.S. Patent and Trademark Office at the time of filing the U.S. design patent application. Therefore, there is no further need for the Applicant to submit the priority document of the Swedish design application for the instant application.

However, Applicant has noticed that in the Official Filing Receipt of the instant application, Applicant's priority claim of the U. S. design patent application No. 29/177,805 was not acknowledged by the Office.

Applicant will submit a separate request to the Initial Examination branch for a corrected filing receipt.

Applicant also requests herein the Examiner's proper consideration of Applicant's priority claim.

3. Response to the Objection of Drawings Based Upon 37 CFR §1.84(p)(5)

Applicant respectfully points out that both features "21" and "50" in the drawings have been described in the Specification as filed. More specifically, the description of the open end portion 21 of the hook segment can be found on page 8, line 14. The description of assembly 50 can be found on page 14, line 8.

Therefore, Applicant respectfully requests withdrawal of the objection of drawings based on 37 CFR §1.84(p)(5).

Furthermore, Applicant submitted herein a proposed correction of Fig. 4 to correct a marking error on part 21. Applicant requests the Examiner's consideration and entering of the corrected drawing.

4. Response to the Rejections of Claims 1-4, 6 and 14 Based Upon 35 USC §103(a)

Claims 1, 4, 6 and 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hickman et al (US 2,227,780) in view of Hickman et al (US

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

2,248,234). This rejection is respectfully traversed by the amendment.

Claims 2-3 have been canceled. Claims 1, 6 and 14 are independent claims, and Claim 4 is a dependent claim of Claim 1.

Applicant's claimed invention defined by Claims 1 and 6 is a carrying device for a bottle. Claim 14 further defines a bottle and carrying device assembly which comprises the carrying device defined by Claim 6.

A determination under 35 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and prior art; and (4) the objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175, F.3d 994, 1000, 50 USPQ 2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

(Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The examiner has the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of the establishing prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the application. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

Applicant submits that nothing in the art of record teaches or suggests the subject matter positively recited in amended independent Claims 1, 6 and 14.

More specifically, as positively recited in the amended independent Claims 1, 6 and 14, Applicant's claimed carrying device for a bottle includes a planar ring segment and a planar hook segment which has a second open end portion extending around more than 180 degrees forming a second opening attachable to the bottle neck; wherein the hook segment can be folded against the ring segment and both segments can be secured around the bottle neck underneath a bottle cap, or the hook segment can be unfold for hooking on to an object for carrying the bottle.

On the contrary, Hickman et al ('780) teach a milk bottle carrier which has substantially different structure and functions from Applicant's claimed carrying device. First, Hickman et al teach a milk bottle carrier which does not have a hook segment. Instead, Hickman et al teach carrying handles formed by two end flaps 12 and 13 which have a pair of substantially rectangular shaped finger-receiving openings 16 and 18 (Column 1, lines 26-27 and Column 2, line 18-27 of '780). Hickman et al specifically teach that the user needs to insert two or three fingers through the openings 16 and 18 to carry the bottle (Column 2, lines 54 to Column 3,

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

line 6). It is noted that this carrying handle structure is the same for the embodiment shown in Figs. 1-3, and the embodiment shown in Figs. 4-6 of the reference. Therefore, Hickman et al's carrying handles do not possess the function of a hook, which is required in Applicant's claimed device.

Applicant has particularly described in the instant specification that using the instant carrying device the user can attach the hook segment to a convenient location around the body, for example, a belt, a belt loop of the pants, or the belt of a handbag and etc (Page 12, second paragraph of the instant specification). It is apparent that Hickman et al's milk bottle carrier can not be attached to the above-mentioned locations for the intended use of the present invention. Therefore, Hickman et al fail to teach the fundamental structural element of the present invention and its function.

The Examiner states that the opening at 28 of Hickman suggests a hook. However, the reference itself teaches the opposite. More specifically, Hickman et al teach that the opening 28 is on the auxiliary flap 24 which serves to reinforce and strengthen the carrier by overlapping the flap 24 with the central section 27, with the opening 28 over the tongues 29 (Column 2, lines 14 to 31). Hickman et al specifically state that the flap 24 has the same function to that of the side flap 19 (Column 3, lines 24 to 31). As clearly shown in Fig. 4 of the reference, flap 24 is not part of the carrying handles.

Second, as positively recited in Claims 1, 6 and 14, the hook segment of Applicant's claimed carrying device is attachable to the bottle neck and can be secured underneath the bottle cap when the device is in a folding position. On the contrary, Hickman et al teach to form the carrying handles by interlocking two end flaps through the rectangular openings, and to position the handles above the bottle. With this structure, Hickman's carrying handles can not be secured around the bottle neck and underneath the cap. Therefore, Hickman et al teach away from Applicant's claimed foldable hook segment.

The deficiencies of Hickman et al ('780) are not overcome by Hickman et al

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

('234).

Hickman et al ('234) teach further variation of the milk bottle carrier described above. However, all variations of the structure are directed to the side flap for reinforcing the central section (see flap 16 in Fig. 4, flap 22 in Fig. 5, and flaps 25 and 27 in Fig. 8 of '234). The carrying handles of '234 are the same to those in '780.

The Examiner suggests that the part 23 of Hickman et al ('234) is a hook. However, Hickman et al teach the side flaps 22 having the semi-circular recess 23 are for folding over the central portion for reinforcing the central portion. The side flaps 22 with the recess 23 are not part of the carrying handles. Further, the edges around the recess 23 do not form a hook. Moreover, there is no motivation to modify the end flap to a hook as suggested by the Examiner, because Hickman et al only teach the side flap 22 to be used for reinforcing the central portion of the carrier. Therefore, Applicants respectfully submits that the Examiner is using hindsight to reconstruct that which Applicant has discovered. Such hindsight based simply on the inventor's disclosure as a blueprint for piecing together prior art to defeat patentability is inappropriate.

It is apparent that neither reference teaches a hook segment for hooking to an object, nor a hook segment (or a carrying handle) foldable around the bottle neck and underneath the cap. These essential structural features of Applicant's claimed carrying device and the function provided by the structure are completely absent in the references. Therefore, one skilled in the art would not be motivated to combine the teachings of the two references to obtain Applicant's claimed invention.

Accordingly, Applicant maintains that Applicant's claimed invention defined by Claims 1, 4, 6 and 14 is unobvious in view of the prior art of record.

With regard to Claim 4, it is dependent upon independent Claim 1. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 1 is unobvious in view of the prior art of record, as such Claim 4 is submitted as being allowable over the art of record.

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

Applicant respectfully requests withdrawal of the rejection of Claims 1, 4, 6 and 14 based upon 35 U.S.C. §103(a).

5. Response to the Rejections of Claims 7-9 and 15-17 Based Upon 35 USC §103(a)

Claims 7-9 and 15-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hickman et al (US 2,227,780) in view of Hickman et al (US 2,248,234), and further in view of Keicher (US 5,749,490). This rejection is respectfully traversed by the amendment.

The applicable case law for a rejection under 35 U.S.C. §103 (a) has been discussed above in the response to the rejection of Claim 1 under 35 U.S.C. §103 (a). In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

Claims 7-9 and 15-17 are dependent upon independent Claims 6 and 14, respectively. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, Independent Claim 1 is unobvious in view of the prior art of record, as such Claims 7-9 and 15-17 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 7-9 and 15-17 based upon 35 U.S.C. §103(a).

6. Response to the Rejections of Claims 5, 10 and 11 Based Upon 35 USC §103(a)

Claims 5 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hickman et al (US 2,227,780) in view of Hickman et al (US 2,248,234) and Keicher (US 5,749,490), and further in view of Arnold (US 5,573,152). This rejection is respectfully traversed by the amendment.

Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

The applicable case law for a rejection under 35 U.S.C. §103 (a) has been discussed above in the response to the rejection of Claim 1 under 35 U.S.C. §103 (a). In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

Claim 11 has been canceled.

Claims 5 and 10 are dependent upon independent Claims 1 and 6, respectively. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 1 is unobvious in view of the prior art of record, as such Claims 5 and 10 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 5 and 10 based upon 35 U.S.C. §103(a).

7. Response to the Rejections of Claims 12, 13 and 18-20 Based Upon 35 USC §103(a)

Claims 12, 13 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hickman et al (US 2,227,780) in view of Hickman et al (US 2,248,234), further in view of Keicher (US 5,749,490) and Arnold (US 5,573,152), yet further in view of Armstrong, Jr. et al (US 2,362,523). This rejection is respectfully traversed by the amendment.

The applicable case law for a rejection under 35 U.S.C. §103 (a) has been discussed above in the response to the rejection of Claim 1 under 35 U.S.C. §103 (a). In the interests of brevity, Applicant requests the Examiner to note the above sections and consider that material incorporated herein by reference.

Claims 19-20 have been canceled. Claims 12, 13 and 18 are dependent upon independent Claims 6 and 14, respectively. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its


Application No. 10/628,520
Amdt. Dated August 23, 2004
Reply to Office Action of April 21, 2004

respective dependent claims. As described above, independent Claim 1 is unobvious in view of the prior art of record, as such Claims 12, 13 and 18-20 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 12, 13 and 18 based upon 35 U.S.C. §103(a).

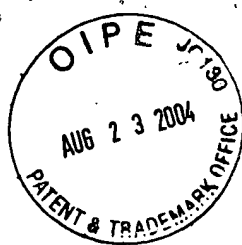
It is respectfully submitted that Claims 1, 4-10 and 12-18, the pending claims, are now in condition for allowance and such action is respectfully requested. Applicant's Agent respectfully requests direct telephone communication from the Examiner with a view toward any further action deemed necessary to place the application in final condition for allowance.

8/23/2004
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Application No. 10/628,520
 Amendment date: 8/23/2004
 Reply to Office Action of 4/21/2004
Annotated Sheet Showing Changes

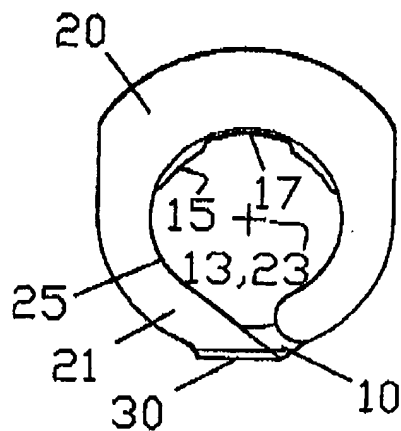


FIG. 3

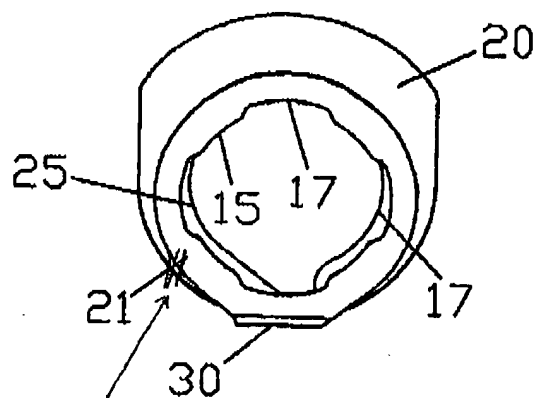


FIG. 4

*Change marking
 to the right
 position*

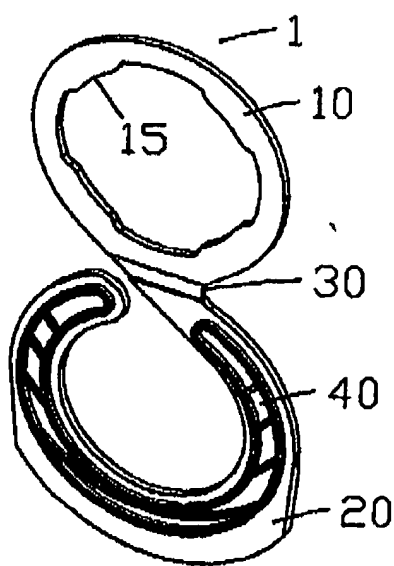


FIG. 5

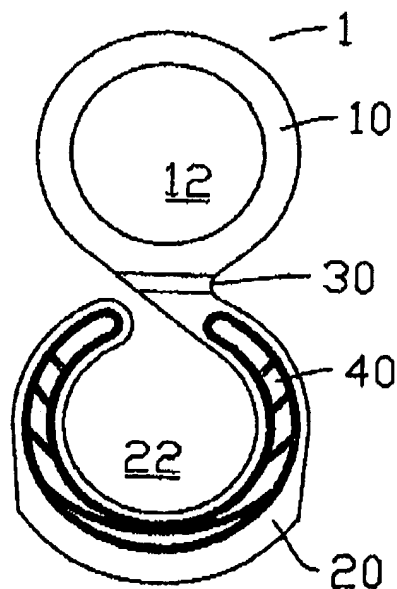


FIG. 6